

MINUTES

REGULAR MEETING OF THE NEWTON CITY COUNCIL – JANUARY 5, 2010

The regular meeting of the Newton City Council was held on Tuesday, January 5, 2010 at 7:00 p.m. in the Council Chambers at City Hall with the following present: Mayor Robert A. Mullinax and Council Members Wayne Dellinger, Mary Bess Lawing, Tom Rowe, Bill Lutz, Robert Abernethy, Jr., and Mayor Pro Tem Anne Stedman.

Also in attendance were City Manager Todd Clark, City Attorney Larry Pitts, City Clerk Beunice R. "Bootsie" Roberts, members of the Management Team, City Department Heads, and guests Dennie Martin and Dave Richmond from McGill Associates.

ITEM 1. CALL TO ORDER – ROBERT A. MULLINAX:

Mayor Mullinax called the meeting to order and welcomed everyone to the first meeting of the New Year - 2010. He also welcomed City Manager Clark's family to the meeting.

ITEM 2. OPENING – COUNCIL MEMBER TOM ROWE:

Council Member Tom Rowe gave the invocation and led the audience in the Pledge of Allegiance.

ITEM 3. APPROVAL OF MINUTES FROM THE DECEMBER 8, 2009 REGULAR COUNCIL MEETING:

A motion was made by Council Member Mary Bess Lawing, seconded by Mayor Pro Tem Anne Stedman, and unanimously adopted to approve the minutes from the December 8, 2009 regular Council meeting as submitted.

ITEM 4. CONSIDERATION OF CONSENT AGENDA ITEMS:

Mayor Mullinax said that the City of Newton would like to host several meetings at the Newton Expo located on West A Street. He said that because it is owned and operated by Council Member Wayne Dellinger, that the City could not use the facility without a resolution waiving the North Carolina General Statute 14-234 which is being presented for approval tonight.

Mayor Mullinax also said that Council Member Dellinger would need to recuse himself from voting on the Consent Agenda item B, and asked for a motion to do so.

A motion was made by Council Member Tom Rowe, seconded by Council Member Mary Bess Lawing, and unanimously approved that Council Member Wayne Dellinger be recused from voting on the Consent Agenda, Item B.

A motion was made by Council Member Robert Abernethy, Jr., seconded by Council Member Tom Rowe, that the Consent Agenda items be approved as submitted.

Mayor Mullinax further stated that the City of Newton has the opportunity to

host several North Carolina League of Municipalities meetings and that the Newton Expo is an excellent place to have a city event or meeting.

A. Consideration of Transfer of funds from Federal Asset Seizure Fund:

B. Consideration of a Resolution Exempting the City of Newton from North Carolina General Statute 14-234:

**(ORDINANCE #2010-1 IS HEREBY REFERENCED
AND ON FILE IN THE OFFICE OF THE CITY CLERK)**

RESOLUTION #1-2010

**A RESOLUTION EXEMPTING THE CITY OF NEWTON
FROM NORTH CAROLINA GENERAL STATUTE § 14-234**

WHEREAS, North Carolina General Statute § 14-234 (a) (1) sets forth that no public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in NCGS § 14-234, or otherwise allowed by law; and

WHEREAS, North Carolina General Statute § 14-234 (a1) (1) defines a “public officer” as an individual who is elected or appointed to serve or represent a public agency, other than an employee or independent contractor of a public agency; and

WHEREAS, Cities having a population of no more than 15,000 according to the most recent official federal census may be exempted from Subdivision (a) (1) of NCGS § 14-234 if the following actions are taken:

- 1) The proposed contract(s) between the city and one of its officials must be approved by a specific resolution of the governing body adopted in an open and public meeting and the action must be recorded in the city council’s minutes;
- 2) The amount does not exceed forty thousand (\$40,000) for goods and services within a 12-month period;
- 3) The official entering into the contract with the unit or agency can not participate in any way or vote;
- 4) The total amount of the contract(s) with each official is specifically noted in the audited annual financial statement of the city; and
- 5) The City Council must post in a conspicuous place in city hall a list of officials with whom contracts have been made, briefly describes the subject matter of the contracts, and shows the total contract amounts within the preceding 12 months; all of which must be updated on a quarterly basis.

WHEREAS, The City of Newton proposes to rent a facility from a City of Newton officer for a public purpose.

NOW THEREFORE, BE IT RESOLVED, That the Newton City Council adopt this resolution with the intent of renting the Newton Expo, owned and operated by Councilman Wayne Dellinger, for the purpose of hosting three events on the dates of February 11, April 1, and April 21, 2010.

Adopted this the 5th day of January 2010.

Robert A. Mullinax, Mayor

ATTEST:

Beunice R. Roberts, CMC/City Clerk

ITEM 5. PRESENTATION OF FISCAL YEAR 2008-2009 ANNUAL FINANCIAL REPORT – PHIL CHURCH OF LOWDERMILK, CHURCH AND COMPANY:

Mayor Mullinax introduced Mr. Phil Church to the new Council Members.

Mr. Church introduced his associate Mrs. Carol Avery, who worked directly with the City staff on preparation of the 2008-2009 Comprehensive Annual Financial Report.

Mr. Church said that the audit report is a very large document to review; therefore, he presented a summary of its contents in a two-page Financial Highlights report for the Year Ended June 30, 2009 and 2008. Mr. Church said that the report had been submitted to the Local Government Commission.

Mr. Church summarized the total revenues and total expenditures from operating expenses, proceeds from borrowing, sale of assets, and the fund balance. He reviewed the General Fund revenues and expenditures, ad valorem taxes collected and investment income, and stated that the available Fund Balance on June 30, 2009 was 27.30% showing an increase of 2.82%. Mr. Church stated that the Local Government Commission recommends that the General Fund Balance should be at least 8% of general fund expenditures at the end of the fiscal year. Mr. Church stated that the City of Newton has done an excellent job in financial management.

Mr. Church reviewed the revenues and expenditures of the Water and Wastewater Fund and the Electric Fund and reviewed the Cash and Investments. In reviewing the Water and Wastewater Fund, Mr. Church pointed out that the fund experienced an operating loss of \$356,689. He said that this loss was before the transfer of \$215,000 from the General Fund, the Grant income from the water and wastewater capital projects for \$1,136,054, and the capital contributions for \$43,461 in the Water and Wastewater Fund.

Mayor Mullinax said that it is important that the City be cognizant of the \$356,689 operating loss. A lengthy discussion was held on the Water and Wastewater Fund and the impact of the 15% and 20% rate increases for Fiscal Year 2009 and Fiscal Year 2010, respectively.

Mr. Church said that the grant revenue makes it appear that the City had a large profit, but it was funds from the CDBG Grant used for the Target project. Mr. Church referred to the Budget and Actual (Non-GAAP) for the Fiscal Year ended June 30, 2009, showing the budgeted amount for charges for services of \$5,197,900, compared to the actual amount of \$4,832,233.

Council Member Wayne Dellinger said that the City was in a drought situation in 2008, and that the citizens are still being conservative with the water.

Mr. Church said that the water situation has been a problem with most cities.

Mayor Mullinax said that the City needs to improve the Water and Wastewater Fund and that water sales are needed. He said that there have been nineteen (19) waterline breaks in the City recently and the list is expanding. Mayor Mullinax reiterated that the City is on a good path financially, and that he did not want the citizens to think that the City made a lot of money off the rate increases – it did not.

Mr. Church reviewed the highlights for the Electric Fund and described it as a break-even situation in comparison to Fiscal Year 2008. He said that there were no capital projects or grants in this fund. He said that the City is doing well in collections. Mr. Church also reviewed the cash and investments for Fiscal Year 2009 - \$8,618,589 in which \$3,183,497 was restricted cash.

Mr. Church recommended that the Council keep an eye on the Water and Wastewater Funds, and complimented the Council in taking a big step to approve utility rate increases the past two years.

Mayor Mullinax thanked Mr. Church for his report.

**(THE COMPREHENSIVE ANNUAL FINANCIAL REPORT
IS ON FILE IN THE OFFICE OF THE FINANCE DIRECTOR).**

**ITEM 6. COMMENTS FROM THE PUBLIC: (PERSONS WANTING TO MAKE A
PUBLIC COMMENT ON NON-AGENDA ITEMS ARE REQUESTED TO SIGN
IN WITH THE CITY CLERK PRIOR TO THE MEETING):**

No one appeared to speak.

ITEM 7. OLD BUSINESS:

A. Report on Utility Billing:

City Manager Todd Clark reported that the information to be presented was not on Utility Billing; instead, it would be more related to the new software components installed by New World. He introduced Mr. Mark Bush from the New World Company in Michigan, who was asked to bring the Council up-to-date on the New World project. City Manager Clark said that from the citizen's view, the utility billing is the most important component, but other components are involved in the New World conversions.

Mr. Bush said that he has worked with the City of Newton for a couple of years and that there have been some difficulties with the utility billing software component. He said that the conversion has been a very complex process.

There was a lengthy discussion on when the City would "Go Live" on the utility software, which Mr. Bush said that the project is 90% completed, but he still could not specifically say when the City would "Go Live." Mr. Bush said that implementation of the

conversion process started in the fall of 2007 and it has taken a long time for it to be completed.

Mayor Mullinax expressed very strongly that New World was highly recommended, and that it was time for the utility conversion to be finished.

Mayor Mullinax asked if New World is able to offer the "Round Up" Program as the Council requested.

Mr. Bush said that there are several "Round Up" programs and that he would have to investigate to see which program would be appropriate for the City of Newton or maybe add a small program to round up the bill, but yes, one of the two programs is available.

Mayor Mullinax asked the life expectancy of the New World software components. Mr. Bush said that New World takes pride in its customer service and hoped Newton would be a customer for life. He said that software programs continue to evolve daily, but at a cost.

City Manager Clark said that there is a maintenance agreement on the software components with New World. He said that the City has paid \$456,400 to New World, which is 92½% of the total cost.

Mayor Mullinax asked Finance Director Hinson when the City started paying a maintenance fee. Mrs. Hinson said that the maintenance fee payments started in January or February 2009 and assessed prior to that time. City Manager Clark said that the maintenance agreement was extended to January 2010.

Council Member Robert Abernethy asked in reference to the New World contract, if there was a specific date set for the conversion to be completed.

Mr. Bush said that no specific date was set, however, the financials software program took nine to ten months to "go live," the human resources software program took six to nine months to "go live," and the utility billing software program is taking a year. Mr. Bush said that the utility billing conversion is almost complete.

Mayor Mullinax said that the Council is ready to get the utility billing software program installed. He also said that the City looks forward to New World's support. Mayor Mullinax informed Mr. Bush that the one thing that was so positive about New World, right up front, was its continued support.

Mayor Mullinax thanked Mr. Bush for his report and for attending the meeting.

B. Clearwell Update:

Director of Public Works and Public Utilities Wilce Martin stated that he would like to update the Council on the leaking tank. He said that the water treatment crews have cleaned the old grout out of the joints in the tank and that the tank has been isolated from the rest of the distribution system to prevent further water loss.

Mr. Martin briefly described the work to be done at the clearwell, and said that

three bids were received for the repairs at the clearwell. He said that after City Manager Clark reviewed the bids and the Staff's recommendation, it was determined that the lowest responsible bidder for the clearwell project was Construction Adhesives Bonding, Inc. for \$15,800. He said that the Staff is eager to get the clearwell repairs completed, but cannot until the weather changes. Mr. Martin said that a temperature of 40 degrees or above is needed to do the work, that it has been too cold.

Mr. Martin said that it should take approximately one week to complete the repairs. No action was required for this item.

ITEM 8. NEW BUSINESS:

A. Consideration of Resolution Authorizing an Application for USDA Funding:

City Manager Todd Clark gave a brief update on the Burris Road Wastewater Pump Station Project, explaining how the Governor withdrew funds for such projects. He mentioned how the Staff had applied twice for a North Carolina Clean Water Management Trust Fund grant and for funding through the America Recovery and Reinvestment Act, but the project did not rank high enough for approval.

City Manager Clark reported that the Council met with Senator Dole two years ago and because of that meeting, the City became eligible for a federal exemption to population requirements for a USDA Rural Development Administered Grant Program. He said that numerous meetings have been held to discuss the possibility of the City applying for USDA funding. City Manager Clark reported that the City of Newton is eligible to apply for a combination grant/loan through USDA. He said that the terms of the grant/loan specify that the City may be eligible for a grant up to 45% (or up to \$900,000) of the estimated project cost, and as part of the grant requirement, USDA policy dictates that grant funding is furnished once the City has completed the project; thus meaning the City will have to initially obtain an interim construction loan.

City Manager Clark said the balance of the project not covered by the grant would be funded through a USDA financed loan at a rate of 3.385% for a term of 40 years. He said that to satisfy the federally funded loan repayment that the City would have to secure a revenue bond. City Manager Clark also said that it was determined that an environmental report would be required at a cost not to exceed \$10,500 and in securing a revenue bond, there would be a need for a bond attorney. City Manager Clark said that City Attorney Pitts has spoken to a bond attorney and was quoted a \$12,000 fee for that part of the application. City Attorney Pitts added that it would include the interim financing also.

City Manager Clark said that this combination grant/loan would require that the City provide funding in advance and later reimbursed. Therefore, there would be an interim construction loan and there would be some financing involved. City Attorney Pitts said that if there was bond anticipation, the Bond Counsel would assist with it.

City Manager Clark informed the Council that Dennie Martin and Dave Richmond from McGill Associates were in the audience to answer questions about the project.

Mr. Martin reported that the USDA program is part of the stimulus-funding

programs. He said that initially Newton was not eligible, but the State has exempted some of its requirements, thus providing the opportunity for the City to consider applying.

Finance Director Serina Hinson reviewed the figures from the amortization schedule, which compared the principal and interest payments between the USDA grant/loan, NC SRF Loan, and a conventional financing option. She said assuming that the City receives a grant up to the 45% for a term of 40 years; the City could actually save \$665,000 from USDA funding.

Mayor Mullinax asked if the City could pre-pay or should set money aside and apply it to the principal of the loan. Mr. Dennie Martin said that the loan could be paid off early without penalty or paid on for a period of time. He said that it would be a good opportunity for the City, if the City is funded the full 45%.

Mayor Mullinax asked if the City meets the criteria for both the loan and grant processes. City Manager Clark responded, yes, and that the City is now eligible to apply for the grant/loan and that the City would not be out of any money for the bond process.

Mr. Martin said that there would be costs for environmental work and a bond attorney.

Mayor Pro Tem Anne Stedman asked if this grant/loan application would delay the current application for the NC SRF funding for the Burris Road Wastewater Pump Station Project. City Manager Clark said that the City is not under a timeline and that it would not delay the project. He said that the City has 60 to 75 days to borrow the money and obtain Local Government Commission approval.

After an additional discussion on the previous grant opportunities applied for and the time period for the USDA grant/loan process, City Manager Clark said that the action tonight is not a commitment, just a request to give him the authorization to submit an application and approve the "Letter of Engagement."

Council Member Robert Abernethy, Jr. asked Mr. Dennie Martin if he felt more positive about the USDA Grant at this time, than he did about the previous grants, as well as, Council Member Bill Lutz questioned the same.

Mr. Dennie Martin said his concern is that if the City does not apply, that the opportunity and funds could be gone, and that the faster the City proceeds with the application process, the better chance it will have.

A motion was made by Council Member Tom Rowe, seconded by Council Member Mary Bess Lawing, and unanimously adopted to approve a resolution authorizing the City Manager to initiate an application for the USDA administered grant/loan.

RESOLUTION #2-2010

RESOLUTION AUTHORIZING AN APPLICATION FOR USDA FUNDING

BE IT RESOLVED THAT:

The City Council of the City of Newton hereby authorizes the City Manager to accept and execute, on behalf of the City Council, the following items from USDA-Rural Utilities Service:

1. A “Letter of Conditions” that has not changed substantially from the “draft” Letter of Conditions reviewed by the City Council
2. The “Environmental Assessment” with any accompanying mitigating measures.
3. The “Letter of Intent to Meet Conditions”
4. The “Loan Resolution”
5. Any other forms required in the application process

These items or forms are a part of the loan application process for obtaining financial assistance from USDA.

We understand that the City Council is not obligated in any way to accept the financial assistance offered by USDA.

This resolution was passed by a vote of 6 for and 0 against, at the regularly scheduled monthly meeting of the City Council on January 5, 2010.

Robert A. Mullinax, Mayor

ATTEST:

Beunice R. Roberts, CMC/City Clerk

B. Consideration of Resolution Approving Amendments to the Western Piedmont Council of Governments (WPCOG) Charter:

City Manager Todd Clark informed the Council that a search committee and the Western Piedmont Council of Governments Policy Board have been actively working on plans to relocate the WPCOG offices to a location that would be more suitable to meet their operational and space needs. He said that in accordance with North Carolina General Statute 160A-475, the WPCOG Charter must be modified to specifically authorize the WPCOG to hold ownership of real property; therefore, an amendment to the Charter was prepared and submitted to the Policy Board for consideration. He said that the Policy Board approved the amendments to the Charter on November 24, 2009, but it would only become official upon an affirmative vote of three-quarters of the member local governments.

City Manager Clark recommended approval of a Resolution approving the amendments to the WPCOG Charter as presented. He said that Attorney Larry Pitts reviewed the amendments and found each to be satisfactory.

Council Member Mary Bess Lawing said that the relocation of the WPCOG offices is a very important project for the WPCOG. She said that the agency currently needs more space and that it would be good for future growth.

Mayor Mullinax thanked Council Member Lawing for serving on the Policy Board.

A motion was made by Council Member Mary Bess Lawing, seconded by Mayor Pro Tem Anne Stedman, and unanimously adopted to approve a Resolution approving amendments to the Western Piedmont Council of Governments Charter.

Council Member Bill Lutz asked if the amendments to the WPCOG Charter would become an issue for the City of Newton in any way.

Mayor Mullinax said that it would not, that it would be great if the office could relocate in the City of Newton. Council Member Wayne Dellinger added that it could affect the City's annual dues.

RESOLUTION #3-2010

RESOLUTION APPROVING AMENDMENTS TO THE WPCOG CHARTER

WHEREAS, North Carolina General Statutes 160A-475 (Legislation) states specific powers of regional councils of governments including authorization to acquire real property by purchase, gift or otherwise and to improve that property; and

WHEREAS, the Legislation further states that the regional council may pledge real property as security for indebtedness used to finance acquisition of that property or for improvements to that real property, subject to approval by the Local Government Commission as required under North Carolina General Statutes 159-153; and

WHEREAS, on November 24, 2009, the Western Piedmont Council of Governments (WPCOG) Policy Board approved amendments to its charter to allow the exercise of all powers authorized under the Legislation, including those related to the acquisition of real property for the purpose of meeting the regional council's office space and program needs, subject to approval by the Local Government Commission, and

WHEREAS, any amendment to the WPCOG charter requires approval by three-fourths of its member local governments.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEWTON, on motion by Council Member Mary Bess Lawing and second by, Mayor Pro Tem Anne Stedman, that the charter of the Western Piedmont Council of Governments be amended as approved by action of the WPCOG Policy Board on November 24, 2009.

Adopted this the 5th day of January 2010.

Robert A. Mullinax, Mayor

ATTEST:

Beunice R. Roberts, CMC/City Clerk

C. Consideration of Review and Approval of the Rural Fire District Budget to be submitted to Catawba County Fire Marshal's Office for FY 2010-2011:

Chief Kevin Yoder gave a detailed report on the Rural Fire District Budget and highlighted the fire protection services provided by the Newton Fire Department.

Chief Yoder said that the fire protection services within the Newton Rural Fire District are funded through a rural fire tax of 7.00 cents per \$100 valuation. Chief Yoder said that he is requesting an increase in the Newton Rural Fire Tax of 2.00 cents more to increase the request to 9.00 cents per \$100 valuation. He said that the increase in the tax would provide additional funding to increase the hours of three part-time positions to full-time status.

Chief Yoder said that Catawba County has asked the City to maintain the collection rate proposed. He said that the tax collection rate varies from district to district and the potential to receive the requested increase is not promised. Chief Yoder said that other fire districts receive a higher tax rate than Newton because they agreed to provide a "First Response" status. He said that the tax rate is based on completed fire and rescue services.

Council Member Mary Bess Lawing asked about Newton's response time in comparison to other fire districts. Chief Yoder said that Newton is second best in response time in the County for inside and rural services – 4 minutes.

Council Member Tom Rowe asked what the cost would be to provide "First Response" status services over the course of a year.

Chief Yoder said that it would probably be \$50,000 to provide "First Response". He said if a citizen cannot get the rescue squad, then they would call the City of Newton. Chief Yoder said that the City of Newton Fire Department covers 75% to 100% medical calls inside and outside and sometimes the department is contacted by Catawba County to answer a call.

Council Member Wayne Dellinger said that the fire equipment and participation in the schools should be considered in the tax increase.

Council Member Bill Lutz asked Chief Yoder to explain the "First Response" status when the fire department is already on the scene. Chief Yoder said that the "First Response" only allows a firefighter to render first aid until the ambulance arrives.

City Manager Clark said that the fire department also helps with light rescue, using the "Jaws if Life" equipment to assist with car accidents.

Council Member Tom Rowe asked if a fire truck is dispatched or a small engine for these type calls. Chief Yoder said that a fire truck is always dispatched and if there is a fire call during the process, the fire truck can meet that call.

Chief Yoder said that the Fire Marshal's Office requested that the respective fire departments and boards submit the rural budgets as soon as possible during the new calendar year.

There being no further discussion on the Rural Fire District Budget, a motion was made by Council Member Mary Bess Lawing, seconded by Council Member Robert Abernethy, Jr., and unanimously adopted to approve the Rural Fire District Budget to be submitted to the Catawba County Fire Marshal's Office for Fiscal Year 2010-2011.

ITEM 9. CITY MANAGER'S REPORT:

City Manager Todd Clark reported on the following issues:

- City Manager Clark explained the process for the GovDeals list so that Council Members Lutz and Abernethy would understand why the listing would be included in their agenda packets from time to time. He stated that the GovDeals are non-action items and included in the packets to the Council for information only. This is an online auction service provided by the City's Finance/Purchasing Department.
- Encouraged the Council to review the Upcoming Events listing and to mark their calendars accordingly.
- Mayor Pro Tem Anne Stedman reminded the Council about the Teen Leadership Program scheduled to begin on February 4, 2010.
- Mayor Mullinax asked the Council to make a choice for their Annual Planning Workshop to be held February 18 or 19 or February 25 or 26. It was the consensus of the Council that the dates of February 18 and 19 are set for the Council's Annual Planning Workshop, and possibly held at the Historic Newton Depot.

ITEM 10. QUESTIONS AND COMMENTS FROM MAYOR AND COUNCIL:

None

ITEM 11. CLOSED SESSION TO CONSULT WITH THE CITY ATTORNEY: G.S. 143-318.11 (a) (5) (i):

Mayor Mullinax stated that the Council needed to have a Closed Session to consult with the City Attorney.

A motion was made by Mayor Pro Tem Anne Stedman, seconded by Council Member Mary Bess Lawing, and unanimously approved that the Council go into Closed Session.

After the Closed Session, Mayor Mullinax called the Council meeting back into regular session.

ITEM 12. ADJOURNMENT:

There being no further business to discuss, a motion was made by Council Member Mary Bess Lawing, seconded by Council Member Bill Lutz, and unanimously approved that the January 5, 2010 meeting be adjourned.

Respectfully submitted by:

Robert A. Mullinax, Mayor

Beunice R. (Bootsie) Roberts, CMC/City Clerk